

Mary Austad

From: Kalei Luyben
Sent: Saturday, August 28, 2021 3:54 PM
To: Mary Austad
Subject: Re: Hearing in the matter of United States of America v. City of Portland Case No. 3:12-cv-02265-SI

CAUTION - EXTERNAL:

Hon. Judge Michael Simon
US District Court (District of Oregon)
1000 SW Third Avenue
Portland, OR 97204

Dear Sir:

Aloha, your honor!

In the year 2011, my research, entitled SHOOTING THE SICK, indicated that Portland Police Bureau had shot (6) and killed (5) persons in mental health crisis rather than get those persons safely to medical care. After sharing this information with the City of Portland, the City Auditor and the Chief of Police, I eventually shared my research with the United States Attorney (Amanda Marshall) and Assistant Attorney (Adrian Brown) adding that, because of the misuse of TASER in Portland, the United States would eventually have to explain to the United Nations why the United States was in violation of its treaty obligations to prevent torture by TASER at the hands of police officers. Citizens of the United States, like others around the world, actually have human rights, which the United States is obligated to uphold and protect here at home even before it advocates for the human rights of citizens living in other countries.

Eventually, after hearing from the community, the United States decided to conduct an investigation and to file a suit, the above-named Case No. 3:12-cv-02265-SI. A Settlement Agreement was reached and put into effect. This Settlement Agreement was the only one of its kind among nearly a dozen such cases. Portland was going to be a leader in the cause of police reform and social justice because all parties were in basic agreement as to what was needed.

Recently, on Tuesday, August 24, 2021, the court held a hearing on the status of that case. A medical emergency in my family prevented my attendance at the hearing. Had I been able to attend the hearing, I would have presented to the court for the record and to all the parties, what I consider an important breakthrough for those of us dedicated to the advancement of human rights for citizens of Portland. Namely, an international commission has heard the complaints of American citizens and has published a complete description of the systemic failure of the criminal justice system of the United States. Having read basic documents, I concur with findings of the United Nations in its REPORT OF THE INTERNATIONAL COMMISSION OF INQUIRY ON SYSTEMIC RACIST POLICE VIOLENCE AGAINST PEOPLE OF AFRICAN DESCENT IN THE UNITED STATES, March 2021. The report is based on hearings conducted from January 18 to February 6, 2021, before a Commission of Inquiry, Office of High Commissioner of Human Rights. The report has been accepted and a

resolution passed by the General Assembly to continue to gather information of police brutality in the US and around the world. Not just police officers, but also lawyers and judges are seen as guilty parties to a conspiracy of impunity and indifference to the human rights of the people.

On the cover of this report -- in fact the very first photograph of victims of police violence -- is the photograph of Portland's Aaron Campbell, the first person shot and killed by Portland Police, January 2010. Marva Davis, mother of Aaron Campbell, and attorney Tom Steenson, former member of the Settlement Agreement's Community Oversight Advisory Board (COAB) brought to the attention of the international commission the serious violations by Portland police of the human rights of Aaron Campbell. In doing so, Davis and Steenson represented the conscience of the community, not only of Portland, but also of all those with a human heart and soul. They spoke for me and others like me, common folks, who have toiled for a decade to end police brutality in our community. Now, the world is watching and listening.

The Portland community has thus far failed to bring trust to the Settlement Agreement. The Settlement Agreement has failed to bring non-violence to the police. The lawyers have failed to bring effective oversight to the system. And the court has failed to bring effective control to the process of insuring transparency, accountability and oversight to the governance of the City of Portland. All of us are now operating in an arena of unending social conflict because the Mayor and City Council have failed to bring clear vision and real honesty to the totality of reforms required by the Settlement Agreement. In circumventing the spirit of the Settlement Agreement, we have brought failure and disgrace to all of us.

At Tuesday's hearing in your courtroom, it has been reported, you asked whether the time had come for Portland to be assigned a monitor. Because I doubt that any of the lawyers in the room wanted to admit the total failure of the Settlement Agreement to bring swift and sincere compliance with all of its terms, I think it is necessary for the court to decide, in its own best interest, whether or not to become complicit with Portland's failures to provide legal, constitutional, civil and human rights to Portland citizens. How long can the court tolerate non-compliance with the Settlement Agreement and not become complicit by silence or tolerance of inaction? By evading responsibility, parties guaranteed to ourselves even greater social harm and further community destruction through delays and mediations of dubious value.

So far as I can tell, the community holds in the highest esteem the service of the court to assist Portland in correcting itself. Patience and kindness have consistently prevailed. Yet, the will to reform seems absent from the City, which appears to prefer huge and debilitating damage -- literally written all across the city -- rather than submit to relatively painless reforms.

What concerns me more than damage to Portland is damage to the United States. As I expected, the United Nations has now taken an interest in the police brutality of America, as evidenced by the killing of George Floyd, and of the world-wide protests that sympathetically followed. Citizens everywhere care deeply about justice and fairness! More important, though, is the concern of all citizens in America for the impunity of police all across the United States. That impunity now extends, quite visibly, to the entire criminal justice system in America. As I have mentioned, the blatant disregard by Portland of the legal, constitutional, civil and human rights of citizens was obvious in 2010. It is even more obvious right now. Only now, we are all guilty of complicity through lack of proper action to fix the problems set so clearly and graphically before us.

For the protection of the court, I would recommend that a monitor be assigned to the above-titled case. I believe that the above-titled report, REPORT OF THE INTERNATIONAL COMMISSION OF INQUIRY OF SYSTEMIC RACIST POLICE VIOLENCE AGAINST PEOPLE OF AFRICAN DESCENT IN THE UNITED STATES, is now a concern of the court. In behalf of the federal system, the USDOJ will have to report its own compliance with international

law. and treaties. The failure of the United States Supreme Court to put limits to the power of police will be in question throughout the period of examination. No matter what the USDOJ offers for explanations and excuses, the United States in the eyes of the world is in violation of human rights of American citizens and is now a member subject to review by the United Nations.

The United States in all of its constitutional branches and governmental organizations must stop denying the undeniable and stop defending the indefensible, and stop tolerating the intolerable. American cops have too much discretion and not enough discipline to police themselves. City Attorneys, District Attorneys, and State Attorneys General are too complicit. Citizens' rights are mostly undefended by governments at any level. Anyone who has read the Dred Scott decision knows of the culpability of the United States Supreme Court in keeping America on a racist pathway to injustice for persons of African descent.

The time, it seems, has come for truth and honesty to prevail. The danger of a collapsing legal and social system is clearly discernable to the court as to the whole world. Wise and timely action by the court might help Portland to turn itself from foolish destruction to sane and sensible reconstruction. This court faces that precious opportunity, in behalf of all Americans -- and in fact of all humanity -- to turn toward justice. If the court takes this one, good step forward, perhaps all good people will have the leadership it can trustingly follow. Perhaps it is not too late to change from wrong to right, from injustice toward justice, from insanity to sanity, from wretched to rejoicing. Perhaps it is not too late to help officers stand in a good place. After all, lame excuses are no substitute for excellent performances. Only excellence can restore both pride and trust for all Portlanders.

Our past can be understood though not applauded. We have failed because we are human. Just exactly so, we can succeed because we are human, for the seeds of good and evil are not only within us but also under our control. Police reform rather than social revolution seems to be the wise and prudent mandate of the people at this time in our history. Perhaps sane intervention by a monitor can break the cycles of violence now common to Portland, across America and around the world.

Under separate cover, I will be sending the above-named report as well as the basic documents and the resolutions from the Human Rights Council, A/HRC/47/CRP.1, and the General Assembly, A/HRC/47/53. I am also sending an article from the Georgia Journal of International and Comparative Law, outlining Global Impunity. I hope that these documents can help frame the reasons for rejecting further delays and more frustrating and feeble excuses for non-compliances with terms of the Settlement Agreement.

We continue to hold you in the highest esteem. Aloha, your honor! As ever, our prayers are always with you.

Sincerely,
Kalei Luyben